

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:22-CV-22626-MOORE/LOUIS

ROCKY RAFAEL FERNANDEZ NAVARRO,

Plaintiff,

vs.

SELENIS TECHNOLOGIES LLC,

Defendants.

**PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S PARTICIPATION
IN RULE 26(F) CONFERENCE OR TO PERMIT DISCOVERY TO COMMENCE
IN THE ALTERNATIVE**

Plaintiff moves this Honorable Court to Compel the Defendant to participate in the Federal Rule of Civil Procedure 26(f) conference, or in the alternative, allow discovery to commence, and states the following:

PROCEDURAL HISTORY

1. Plaintiff filed his Complaint on August 18, 2022. [ECF No. 1].
2. On August 19, 2022, Plaintiff's law firm was contacted by attorney, Daniel Feld (FL Bar 37013), who stated he was representing the Defendants for the limited purpose of settling the case.
3. The parties started engaging in settlement negotiations on August 23, 2022, but were not able to reach a resolution as late as October 2022.
4. After evading service for months, Defendant appeared in the case on or around March 5, 2023. [ECF No. 27].

5. On March 17, 2023, this Court ordered a settlement conference to occur on May 1, 2023. [ECF No. 33].
6. Plaintiff sent Defendant another settlement demand to resolve the case and potentially obviate the need for the settlement conference. *Exhibit A*.
7. However, Defendant never responded to the settlement demand.
8. On April 3, 2023, Plaintiff attempted to contact the Defendant again about settling the case and still received no response. *Id.*
9. On April 4, 2023, Plaintiff served discovery (interrogatories, request for admission, and request for production) on the Defendant. *Exhibit B*.
10. Suddenly, on April 5, 2023, Defendant responded by saying the discovery was premature because no Rule 26(f) conference had been held yet. *Id.*
11. Defendant further stated that this Court “required us to conduct the 26f conference and file a scheduling report in the even[t] that we dont settle the case.” *Id.*
12. Plaintiff agreed that discovery was premature because the Rule 26(f) conference had not been held and withdrew the discovery. *Id.*
13. However, on April 6, 2023, Plaintiff asked Defendant to identify which one of this Court’s orders specified that a Rule 26(f) discovery conference could not be held prior to the settlement conference. *Id.*
14. Unsurprisingly, Plaintiff never received a response from Defendant.
15. Plaintiff attempted to call Defendant’s counsel on April 12, 2023 to follow up on the inquiry and hold a Rule 26(f) conference, but the call went unanswered.

16. Based on past patterns and practices of the Defendant, Plaintiff has no reason to believe Defendant will respond to its request to hold a Rule 26(f) conference.
17. Plaintiff needs to gather evidence in this case to pursue his claims against the Defendant.
18. Federal Rule of Civil Procedure 26(f) states “the parties must confer as soon as practicable” in holding the conference planning for discovery. Fed. R. Civ. P. 26(f)(1).
19. Therefore, Plaintiff moves this Court for an order compelling the Defendant to participate in a Rule 26(f) conference within five (5) days.
20. In the alternative, Plaintiff requests that he be allowed to serve discovery on Defendant without participating in a Rule 26(f) conference.
21. Although Federal Rule of Civil Procedure 26(d)(1) prevents discovery from being sought before the parties have conferred as required by Rule 26(f), a court may allow early discovery for good cause shown. *Reiterman v. Abid*, 2019 WL 6114945, at *1 (M.D. Fla. Nov. 18, 2019) (“However, for good cause, the court may allow early discovery.”).
22. In this case, Plaintiff filed his Complaint more than seven months ago, and Defendant only appeared after being served by the Secretary of State.
23. While indicating that it wishes to settle the case, Defendant has alternatively been absent, frustrated settlement negotiations, and been completely non-responsiveness for the past seven months unless ordered into action by court process or order.
24. Therefore, it is highly unlikely this case will settle on May 1, 2023 at the settlement conference, and discovery should not be delayed until Defendant decides that it will participate in a Rule 26(f) conference.

25. Resolution of this case is more likely to occur once the discovery process begins, and Plaintiff requests that it be allowed to serve its requests on the Defendant immediately.

LOCAL RULE 7.1 CERTIFICATION

Undersigned counsel attempted to confer with counsel for Defendant regarding the relief requested in this motion as stated above.

Respectfully submitted on April 12, 2023.

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